IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 403 of 1992

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
BHAGATSINH RANJITSINGH - Defendant(s)

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Appearance :
GOVERNMENT PLEADER for Appellant(s) : 1 - 2.
MR MC SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 18/07/2006

ORAL JUDGMENT

1. By way of this First Appeal, the appellants – original defendants – State of Gujarat and Senapati, SRPF Group - II, Ahmedabad, have assailed the judgment and decree passed by the City Civil Court, Ahmedabad, dated 8.10.1991 passed in Civil Suit No. 2727 of 1990 by which, the learned trial Court has partly allowed the

plaintiff's suit by quashing and setting aside the order of dismissal passed by the appellants – original defendants and further passed an order of reinstatement of the respondent herein – original plaintiff in service with all consequential benefits and emoluments by further directing the competent authority to reconsider the question of punishment in view of the observations made by this Court and to pass any order under Section 18(1) of the Bombay State Reserve Police Force Act and Rule 3(2) of the Bombay Police (Punishment and Appeals) Rules; 1956.

2. The plaintiff was serving as a Police Constable in SRPF Group - II, Ahmedabad. At the relevant time, he was posted at Muktasar (Punjab) and the Punjab State was declared as terrorist hit and disturbed State. The concerned unit was posted at Bhatinda and Faridkot District in Punjab for the maintenance of internal security on 26.6.1988 and the concerned unit, of which, the plaintiff belongs, joined their duties on

1.7.1988 and the unit – D of which, the plaintiff belongs, was posted at Muktasar (Punjab). Thus, the plaintiff was posted at Muktasar (Punjab) for the maintenance of internal security on or about 1.7.1988. On 6.7.1988, the plaintiff did not resume his duties and left without informing the superior and even without surrendering 50 cartridges of 303 and the plaintiff remained on unauthorized absence since 6.7.1988 and after the Company Commander served a notice upon the plaintiff, he resumed his duties on 2.8.1988 at Muktasar (Punjab). It appears from the record that before the plaintiff was declared as absconder, he submitted the report for changing his head quarter from Punjab and thereafter, again he has gone on unauthorized leave from 8.8.1988 and again reported for his duties on 16.8.1988. The plaintiff was served with the show-cause notice dated 17.8.1988 and by report dated 24.8.1988 the plaintiff admitted his guilt and requested to pardon him and to allow him to serve. Considering the seriousness of the misconduct,

the plaintiff was served with the charge-sheet. An Inquiry Officer was appointed and by written submission the plaintiff admitted the charges levelled in the charge-sheet and the Inquiry Officer submitted the report holding the charges proved against the plaintiff. The disciplinary authority, considering the fact that the plaintiff was in habit of remaining on unauthorized leave time and again and from the date of his joining duties he was four times punished and even he was given the last warning for remaining on unauthorized absent and considering the fact that he was posted at a place which was very sensitive for the purpose of maintenance of internal security, the disciplinary authority passed an order of dismissing the plaintiff from service. Being aggrieved and dissatisfied with the order of dismissal, without preferring any statutory appeal as required to be preferred, the respondent herein – original plaintiff filed Civil Suit being Civil Suit No. 2727 of 1990 before the City Civil Court at Ahmedabad for the

declaration that the order of dismissal dated 8.6.1990 is null and void and without jurisdiction and for the further reliefs of reinstatement in service.

3. It was the contention on behalf of the plaintiff in the suit that he left the place of service as he received the news that his wife was serious and was having bleeding trouble. It was also averred that the defendant No.2 has no justifiable reason for refusing the leave and there was no misconduct on the part of the plaintiff. It was also averred that the order of punishment is too harsh, which was not warranted looking to the misconduct alleged. It was also averred that in the show-cause notice, the defendant No.2 has considered the charges of having found him drunk and while passing the final order, the disciplinary authority has also considered the same but as for the same the inquiry was pending, the same should not have been considered. It was also averred that initiation of inquiry proceedings was belatedly

and the defendant No.2 has no power to dismiss the plaintiff and for that even the order of vacating the quarter by the defendant No.2 was also bad and illegal.

4. The suit was resisted by the appellants – original defendant Nos.1 and 2. The written statement at Exh.15 was filed denying the allegations made in the plaint. It was submitted that the plaintiff was sent to Punjab with his unit for internal security and without prior permission of the superior officer and without even handing over 50 cartridges of 303, the plaintiff ran away from his duties and has shown serious negligence in the discharge of his duties, which is also in violation of Discipline and Company Rules, which the police officer has to maintain. It was also submitted in the written statement that the plaintiff is in habit of remaining on unauthorized absent and earlier also he has remained on unauthorized absent for four times and for that he was punished and penalty was imposed and even he was given the

last warning against remaining on unauthorized absent and therefore, it was submitted that the order of dismissal in the facts and circumstances of the case, cannot be said to be disproportionate to the misconduct, more particularly, when he has admitted the guilt on remaining on unauthorized absent. He has also further submitted that the defendant No.2 is the Competent Disciplinary Authority and has also denied that the charge-sheet was given and the departmental inquiry was initiated belatedly. The City Civil Court framed the issues at Exh.18. Neither of the parties led any oral evidence but relied upon the documentary evidence only. After considering the documentary evidence and after considering the submissions made on behalf of the parties, the learned trial Court held that the departmental inquiry was not initiated belatedly and the defendant No.2 is the Competent Disciplinary Authority. The learned trial Court also held that the plaintiff has remained absent from his duties and the same is proved and that the plaintiff has admitted

the guilt about his remaining absent from his duties and there is no contest in the inquiry proceedings. The learned trial Court also held that the disciplinary authority has passed an order of dismissal after giving full opportunity to the plaintiff at the inquiry stage and therefore, the order passed in the departmental inquiry cannot be said to be bad and/or illegal and/or against the principles of natural justice. However, on accepting the submissions on behalf of the plaintiff that for remaining on unauthorized absent punishment of dismissal is too harsh and relying upon the two decisions of this Court in case of ***R.M.Parmar V/s. Gujarat Electricity Board, Baroda*** reported in **23(1) GLR P-352** and in case of ***Sardarsingh Devisingh V/s. District Supdt. Of Police*** reported in **26(2) GLN P-1368**, the trial Court by its judgment and decree dated 8.10.1991 partly allowed the said suit and set aside the order of dismissal and passed an order of reinstatement of the plaintiff with all consequential benefits and emoluments and the competent authority was

directed to take a fresh decision with regard to punishment, considering the aforesaid two decisions and the provisions of the Act and Rules. Being aggrieved and dissatisfied with the same, the State Government and the Senapati, Group – II, Ahmedabad, have preferred the present First Appeal.

5. None represented the State Government. This Court has heard Shri M.C.Shah, learned advocate appearing on behalf of the respondent herein – original plaintiff and have also gone through the Records and Proceedings and the judgment under challenge.

6. Shri M.C.Shah, learned advocate appearing on behalf of the respondent has mainly submitted that the learned trial Court has rightly allowed the suit partly by quashing and setting aside the order of dismissal and considering the fact that the punishment of dismissal for 27 days unauthorized absent is too harsh and the learned trial Court has rightly directed the

disciplinary authority to reconsider the quantum of punishment. It is also submitted that it is not that there was no reason to remain absent but as his wife was sick, he was required to attend his wife and therefore, he has proceeded on leave and in fact, he has produced the medical certificate of his wife also and therefore, it is requested to dismiss the appeal. He has also further submitted that if the plaintiff is to be dismissed from service at this stage, it will be too harsh, more particularly, when the plaintiff is aged about 55 years.

7. It is not in dispute that the plaintiff was serving in a discipline force i.e. SRPF and the unit of which the plaintiff belongs was posted at Muktsar (Punjab). It is also required to be noted that at the relevant time, the said area and the Punjab State was badly affected due to terrorists and even was declared as terrorist affected and disturbed State. The plaintiff and their unit was posted for internal security. The

concerned unit was transferred to Muktsar (Punjab) on 26.6.1988 and the plaintiff and the entire unit reported for their duties on 1.7.1988. It also appears from the order of dismissal dated 8.6.1990 that the plaintiff remained on unauthorized absent and/or on leave without prior permission of the competent authority right from 6.7.1988 and even without informing the superior authority and reported for his duties on 2.8.1988, after he was served with the notice by the Commandant. It is also borne out from the said order that he submitted the report for changing his head quarter and thereafter, again remained on unauthorized absent from 8.8.1988 and again reported for the duties on 16.8.1988. Not only that but even the plaintiff did not deposit the 50 cartridges of 303. The departmental inquiry was initiated against him and the plaintiff admitted the charges of remaining on unauthorized absent. However, he submitted that as his wife was sick, he was required to attend his wife and therefore, he remained on unauthorized absent

from 6.7.1988. It is the contention on behalf of the plaintiff that he submitted the medical certificate of his wife but it is observed by the Disciplinary Authority as well as by the learned trial Court that the said medical certificate was produced subsequently. It is required to be noted that he remained on unauthorized absent from 6.7.1988 to 1.8.1988; he reported for his duties on 2.8.1988, after he was served with the notice by the Commandant and thereafter, he submitted report for changing head quarter and again he remained on unauthorized absent from 8.8.1988 and again reported for his duties on 16.8.1988. This shows the conduct of the plaintiff and the reliability of the medical certificate submitted by the plaintiff. The submission of medical certificate of his wife, subsequently, is nothing but an afterthought. It is also borne out from the record, which is not disputed by the plaintiff, that earlier also the plaintiff was punished four times and that he was in habit of remaining on unauthorized absent without leave and even

last warning was also given to him against remaining on unauthorized absent. Inspite of these, the learned trial Court relying upon the aforesaid two decisions of this Court in case of ***R.M.Parmar*** and in case of ***Sardarsingh Devisingh*** (Supra) has held that the disciplinary authority has not considered as to whether the punishment of dismissal is required to be imposed or any lesser punishment could have been imposed, and consequently, set aside the order of dismissal and passed an order of reinstatement with full back wages. In the facts and circumstances of the case, the learned trial Court has mis-applied and mis-interpreted the aforesaid two decisions, more particularly, when the past conduct of the plaintiff has also not been considered by the learned trial Court. For the purpose of quantum of punishment, past conduct is also a relevant consideration. Earlier also, the plaintiff is found to be in habit of remaining on unauthorized absent and was not only warned but four times punished also. The learned trial Court has also not properly

appreciated and considered the fact that the plaintiff was in a disciplined force and was posted at a place where his services were required and the said place was declared as disturbed area and for the purpose of maintenance of internal security, he was posted but he absconded and/or not reported for his duties and left his duties unauthorizedly. As stated hereinabove, the defence that his wife was sick is not only baseless but afterthought. It is required to be noted and as stated hereinabove, the plaintiff and the unit was posted at Punjab on 1.7.1988 but he remained on unauthorized absent from 6.7.1988 till 1.8.1988 and reported for his duties on 2.8.1988, after he was served with the notice by the Commandant and immediately, he submitted the report for changing head quarter and again he remained absent from 8.8.1988 till 16.8.1988. Thus, from the above conduct and the report for changing the head quarter shows the misconduct on the part of the plaintiff and the only intention of the plaintiff was not to serve at Punjab. At

this stage, the recent judgment of the Hon'ble Supreme Court in case of ***Union of India And Others V/s. Ghulam Mohd. Bhatt*** reported in **2005(13) SCC P-228** is required to be considered. The Hon'ble Supreme Court in the said case, considering the case of a person who was serving as a Constable in CRPF, who remained on unauthorized absent and upholding the order of dismissal, the Hon'ble Supreme Court has observed that an act of indiscipline by a Police Constable needs to be dealt with sternly. Considering the judgment of the Hon'ble Supreme Court, misconduct of the plaintiff and his past conducts and that the plaintiff belonging to disciplined force remained on unauthorized absent and that too when his services were needed by the nation and considering the above, if the order of dismissal is passed, it cannot be said that it is excessive and/or unjust. The learned trial Court has materially erred in quashing and setting aside the order of dismissal and also erred in passing an order of reinstatement and remitting the matter to the

disciplinary authority for reconsideration of the quantum of punishment. In the facts and circumstances of the case, the disciplinary authority was justified in passing an order of dismissal, which was not required to be interfered with by the learned trial Court. So far as the submission on behalf of the plaintiff that at this stage he may not be dismissed from service is concerned, it is required to be noted that as such the order of dismissal was passed as far back as in the year 1990 and this First Appeal is of the year 1992, however, the same was placed for hearing now. Merely because there is a delay on the part of the Court in disposing of the First Appeal after 14 years, is no ground to pass any other order in favour of the plaintiff, against whom valid dismissal order is passed and the plaintiff cannot be given the premium. On the contrary, though the plaintiff was required to be dismissed in the year 1991 itself, he is continued in service and as such the plaintiff is already benefited. Under the circumstances, the contention on behalf of the

plaintiff cannot be accepted.

8. For the reasons stated above, the appeal succeeds. The judgment and order passed by the learned City Civil Court, Court No. 11, Ahmedabad, dated 8.10.1991 passed in Civil Suit No. 2727 of 1990 is hereby quashed and set aside and the order passed by the original defendant No.2 – appellant No.2 herein dismissing the respondent herein – original plaintiff from services is hereby restored. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.